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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/722,957	11/26/2003	Tamotsu Kajihara	2271/71604	1210

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EXAMINER

MOTSINGER, SEAN T

ART UNIT	PAPER NUMBER
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2624

MAIL DATE	DELIVERY MODE
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07/19/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/722,957

Applicant(s)

KAJIHARA, TAMOTSU

Examiner

Sean Motsinger

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 12-27 and 29-30 and 32-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 10, 11, 28 and 30 is/are rejected.
- 7) ☒ Claim(s) 7-9 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>11/26/2003, 4/19/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

Response to Applicants Election

1. Claims 12-27 and 29, 30, 32, and 33 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 6/8/2007. Claims 1-11, 28 and 31 have been examined on the merits below.

Objections to the Drawings

2. Figure 1 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Rejections Under 35 U.S.C. 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

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3. Claim 28 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Computer programs per se are non-statutory because they are abstract. To comply with 35 U.S.C. 101 one must claim a computer readable medium (article of manufacture) which stores a computer program.

Rejections Under 35 U.S.C. 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 5, 6, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamaguchi US 2001/0005222 in view of Tohyama et al US 2001/0012399.
5. Re claim 1 Yamaguchi discloses An apparatus for performing image processing on image data including a memory color, comprising: a characteristic value calculation part calculating a characteristic value from the image data (paragraph 77 note an several values are calculated); an area extraction part extracting a specific color area of a specific color (abstract facial color area paragraph 85) and a

background (abstract background paragraph 78) area thereof from the image data (separate person and background paragraph 82), using the characteristic value (paragraph 79 paragraph 80 and paragraph 81 note characteristic values are used) and color information (predetermined conditions paragraph 85) of the memory color stored in a storage part ; a target value calculation part (skin pigmentation correction target values paragraph 84) calculating a target value (target values paragraph 86) for correcting a preferable color of the specific color from the characteristic value (paragraph 86 note its calculated from the characteristic values), the extracted specific color (chromaticities paragraph 86), and color information of the preferable color stored in the storage part (target values); and an image data color correction part (paragraph 91) calculating a correction for correcting the preferable color based on the calculated target value and the characteristic value, and correcting (performing correction paragraph 91) a color of the specific color area based on the calculated correction and the characteristic value.

6. Yamaguchi does not take into account the color the background area when correcting the skin color area. Tohyama suggests taking into account the background color when correcting color (see abstract). The motivation to combine is to "allow color reproduction with high fidelity"(see abstract). Therefore it would have been obvious to one of ordinary skill in the art to combine Yamaguchi and Tohyama to reach the aforementioned advantage.

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7. Re claim 5 Yamaguchi further discloses wherein said characteristic value calculation part splits the image data into a plurality of regions (separate and label areas paragraph 76), and calculates, for each region, at least one of an average, a median, a mode, and a standard deviation in color information (average paragraph 77), and a percentage of the region in the image data.
8. Re claim 6 Yamaguchi further discloses wherein the color information of the preferable color of the memory color stored in the storage part comprises chromaticity coordinates in a color space (target values of Y Cb and Cr paragraph 86) and a range of the chromaticity coordinates (predetermined conditions paragraph 84).
9. Re claim 10 Claim 10 is the method carried out by the apparatus of claim 1 and is likewise rejected.
10. Claims 28 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamaguchi in view of Tohyama et al in further view common knowledge in the art.
11. Re claim 28, Claim 28 is a computer program for performing the method of claim 10. Yamaguchi and Tohyama disclose the method of claim 10. Examiner is taking official notice that it is notoriously well known to perform such operations with a

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computer program. The advantage is to allow the method to be preformed on a programmable computer. Therefore it would have been obvious to one of ordinary skill in the art to perform the method with a computer program.

12. Re claim 28, Claim 28 is a computer readable medium storing a computer program for performing the method of claim 10. Yamaguchi and Tohyama disclose the method of claim 10. Examiner is taking official notice that it is notoriously well known to perform such operations with a computer program and store the program on a compact disk. The advantage is to allow the method to be preformed on a programmable computer. Therefore it would have been obvious to one of ordinary skill in the art to perform the method with a computer program.

13. Claims 2-4 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamaguchi in view of Tohyama et al in further view of Takemoto US 2002/0021360.

14. Re claim 2 Yamaguchi and Tohyama discloses all of the elements of claim 1. They do not disclose obtaining attribute information added to the image data, wherein said image data color correction part corrects the color of the specific color area based further on the obtained attribute information. Takemoto discloses obtaining attribute information (condition paragraph 83) added to the image data, wherein said image data color correction part corrects the color of the specific color

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area based further on the obtained attribute information (paragraph 83 note the correction is based on condition information). The motivation to combine is colors and tones can be set as desired for each model of a digital camera (see abstract). Therefore it would have been obvious to one of ordinary skill in the art to combine Takemoto with Yamaguchi and Tohyama to reach the aforementioned advantage.

15. Re claim 3 Takemoto further discloses wherein the attribute information obtaining part obtains information on a condition for capturing (condition paragraph 83) the image data as the attribute information, the condition being one of a scene capture type, an F number, a shutter speed, white balance, and presence or absence of a flash (paragraph 83).
16. Re claim 4 Takemoto further discloses wherein said image data color correction part corrects the color of the specific color area by multiplying the calculated correction by a correction factor set according to the condition for capturing the image data (equations 8, 9, 10 see paragraph 73 and paragraph 83).

Allowable Subject Matter

17. Claims 7-9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 7 contains allowable subject

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matter because none of the prior art discloses an intersection of a straight line and an ellipsoid as the target value of the preferable color, the straight line being parallel to a slope of a segment connecting chromaticity coordinates of the background area and an origin, and passing through chromaticity coordinates of the preferable color of the specific color. Claims 8 and 9 depend from claim 7 and therefore also include allowable subject matter.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sean Motsinger whose telephone number is 571-270-1237. The examiner can normally be reached on 9-5 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jingge Wu can be reached on (571)272-7429. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Motsinger
7/9/2007


JINGGE WU
SUPERVISORY PATENT EXAMINER